



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB5928

Introduced 2/10/2010, by Rep. Emily McAsey

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Uniform Child Abduction Prevention Act. Provides that a court on its own motion may order abduction prevention measures in a child custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child. Provides that a party to a child custody determination or another individual or entity having a right under the law of this State or any other state to seek a child custody determination for the child may file a petition seeking abduction prevention measures to protect the child. Provides that a State's Attorney may seek a warrant to take physical custody of a child or other appropriate prevention measures. Contains provisions concerning definitions, cooperation and communication among courts, jurisdiction, contents of petitions, factors to determine risk of abduction, measures to prevent abduction, warrants to take physical custody of a child, duration of abduction prevention order, uniformity of application and construction, and other matters.

LRB096 18061 AJ0 33435 b

1 AN ACT concerning child abduction.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Uniform Child Abduction Prevention Act.

6 Section 2. Definitions. In this Act:

7 (1) "Abduction" means the wrongful removal or wrongful  
8 retention of a child.

9 (2) "Child" means an unemancipated individual who is less  
10 than 18 years of age.

11 (3) "Child-custody determination" means a judgment,  
12 decree, or other order of a court providing for the legal  
13 custody, physical custody, or visitation with respect to a  
14 child. The term includes a permanent, temporary, initial, and  
15 modification order.

16 (4) "Child-custody proceeding" means a proceeding in which  
17 legal custody, physical custody, or visitation with respect to  
18 a child is at issue. The term includes a proceeding for  
19 divorce, dissolution of marriage, separation, neglect, abuse,  
20 dependency, guardianship, paternity, termination of parental  
21 rights, or protection from domestic violence.

22 (5) "Court" means an entity authorized under the law of a  
23 state to establish, enforce, or modify a child-custody

1 determination.

2 (6) "Petition" includes a motion or its equivalent.

3 (7) "Record" means information that is inscribed on a  
4 tangible medium or that is stored in an electronic or other  
5 medium and is retrievable in perceivable form.

6 (8) "State" means a state of the United States, the  
7 District of Columbia, Puerto Rico, the United States Virgin  
8 Islands, or any territory or insular possession subject to the  
9 jurisdiction of the United States. The term includes a  
10 federally recognized Indian tribe or nation.

11 (9) "Travel document" means records relating to a travel  
12 itinerary, including travel tickets, passes, reservations for  
13 transportation, or accommodations. The term does not include a  
14 passport or visa.

15 (10) "Wrongful removal" means the taking of a child that  
16 breaches rights of custody or visitation given or recognized  
17 under the law of this State.

18 (11) "Wrongful retention" means the keeping or concealing  
19 of a child that breaches rights of custody or visitation given  
20 or recognized under the law of this State.

21 Section 3. Cooperation and communication among courts.  
22 Sections 110, 111, and 112 of the Uniform Child-Custody  
23 Jurisdiction and Enforcement Act apply to cooperation and  
24 communications among courts in proceedings under this Act.

1 Section 4. Actions for abduction prevention measures.

2 (a) A court on its own motion may order abduction  
3 prevention measures in a child-custody proceeding if the court  
4 finds that the evidence establishes a credible risk of  
5 abduction of the child.

6 (b) A party to a child-custody determination or another  
7 individual or entity having a right under the law of this State  
8 or any other state to seek a child-custody determination for  
9 the child may file a petition seeking abduction prevention  
10 measures to protect the child under this Act.

11 (c) A State's Attorney or other appropriate public official  
12 designated under Section 315 of the Uniform Child-Custody  
13 Jurisdiction and Enforcement Act may seek a warrant to take  
14 physical custody of a child under Section 9 of this Act or  
15 other appropriate prevention measures.

16 Section 5. Jurisdiction.

17 (a) A petition under this Act may be filed only in a court  
18 that has jurisdiction to make a child-custody determination  
19 with respect to the child at issue under the Uniform  
20 Child-Custody Jurisdiction and Enforcement Act.

21 (b) A court of this State has temporary emergency  
22 jurisdiction under Section 204 of the Uniform Child-Custody  
23 Jurisdiction and Enforcement Act if the court finds a credible  
24 risk of abduction.

1           Section 6. Contents of petition. A petition under this Act  
2 must be verified and include a copy of any existing  
3 child-custody determination, if available. The petition must  
4 specify the risk factors for abduction, including the relevant  
5 factors described in Section 7. Subject to any other law  
6 providing for the confidentiality of procedures, addresses,  
7 and other identifying information, if reasonably  
8 ascertainable, the petition must contain:

9           (1) the name, date of birth, and gender of the child;

10           (2) the customary address and current physical  
11 location of the child;

12           (3) the identity, customary address, and current  
13 physical location of the respondent;

14           (4) a statement of whether a prior action to prevent  
15 abduction or domestic violence has been filed by a party or  
16 other individual or entity having custody of the child, and  
17 the date, location, and disposition of the action;

18           (5) a statement of whether a party to the proceeding  
19 has been arrested for a crime related to domestic violence,  
20 stalking, or child abuse or neglect, and the date,  
21 location, and disposition of the case; and

22           (6) any other information required to be submitted to  
23 the court for a child-custody determination under Section  
24 209 of the Uniform Child-Custody Jurisdiction and  
25 Enforcement Act.

1 Section 7. Factors to determine risk of abduction.

2 (a) In determining whether there is a credible risk of  
3 abduction of a child, the court shall consider any evidence  
4 that the petitioner or respondent:

5 (1) has previously abducted or attempted to abduct the  
6 child;

7 (2) has threatened to abduct the child;

8 (3) has recently engaged in activities that may  
9 indicate a planned abduction, including:

10 (A) abandoning employment;

11 (B) selling a primary residence;

12 (C) terminating a lease;

13 (D) closing bank or other financial management  
14 accounts, liquidating assets, hiding or destroying  
15 financial documents, or conducting any unusual  
16 financial activities;

17 (E) applying for a passport or visa or obtaining  
18 travel documents for the respondent, a family member,  
19 or the child; or

20 (F) seeking to obtain the child's birth  
21 certificate or school or medical records;

22 (4) has engaged in domestic violence, stalking, or  
23 child abuse or neglect;

24 (5) has refused to follow a child-custody  
25 determination;

26 (6) lacks strong familial, financial, emotional, or

1 cultural ties to the state or the United States;

2 (7) has strong familial, financial, emotional, or  
3 cultural ties to another state or country;

4 (8) is likely to take the child to a country that:

5 (A) is not a party to the Hague Convention on the  
6 civil aspects of international child abduction and  
7 does not provide for the extradition of an abducting  
8 parent or for the return of an abducted child;

9 (B) is a party to the Hague Convention on the civil  
10 aspects of international child abduction but:

11 (i) the Hague Convention on the civil aspects  
12 of international child abduction is not in force  
13 between the United States and that country;

14 (ii) is noncompliant according to the most  
15 recent compliance report issued by the United  
16 States department of state; or

17 (iii) lacks legal mechanisms for immediately  
18 and effectively enforcing a return order under the  
19 Hague Convention on the civil aspects of  
20 international child abduction;

21 (C) poses a risk that the child's physical or  
22 emotional health or safety would be endangered in the  
23 country because of specific circumstances relating to  
24 the child or because of human rights violations  
25 committed against children;

26 (D) has laws or practices that would:

1           (ii) enable the respondent, without due cause,  
2           to prevent the petitioner from contacting the  
3           child;

4           (ii) restrict the petitioner from freely  
5           traveling to or exiting from the country because of  
6           the petitioner's gender, nationality, marital  
7           status, or religion; or

8           (iii) restrict the child's ability legally to  
9           leave the country after the child reaches the age  
10          of majority because of a child's gender,  
11          nationality, or religion;

12          (E) is included by the United States Department of  
13          State on a current list of state sponsors of terrorism;

14          (F) does not have an official United States  
15          diplomatic presence in the country; or

16          (G) is engaged in active military action or war,  
17          including a civil war, to which the child may be  
18          exposed;

19          (9) is undergoing a change in immigration or  
20          citizenship status that would adversely affect the  
21          respondent's ability to remain in the United States  
22          legally;

23          (10) has had an application for United States  
24          citizenship denied;

25          (11) has forged or presented misleading or false  
26          evidence on government forms or supporting documents to

1 obtain or attempt to obtain a passport, a visa, travel  
2 documents, a Social Security Card, a driver's license, or  
3 other government-issued identification card or has made a  
4 misrepresentation to the United States government;

5 (12) has used multiple names to attempt to mislead or  
6 defraud; or

7 (13) has engaged in any other conduct the court  
8 considers relevant to the risk of abduction.

9 (b) In the hearing on a petition under this Act, the court  
10 shall consider any evidence that the respondent believed in  
11 good faith that the respondent's conduct was necessary to avoid  
12 imminent harm to the child or respondent and any other evidence  
13 that may be relevant to whether the respondent may be permitted  
14 to remove or retain the child.

15 Section 8. Provisions and measures to prevent abduction.

16 (a) If a petition is filed under this Act, the court may  
17 enter an order that must include:

18 (1) the basis for the court's exercise of jurisdiction;

19 (2) the manner in which notice and opportunity to be  
20 heard were given to the people entitled to notice of the  
21 proceeding;

22 (3) a detailed description of each party's custody and  
23 visitation rights and residential arrangements for the  
24 child;

25 (4) a provision stating that a violation of the order

1           may subject the party in violation to civil and criminal  
2           penalties; and

3           (5) identification of the child's country of habitual  
4           residence at the time of the issuance of the order.

5           (b) If, at a hearing on a petition under this Act or on the  
6           court's own motion, the court after reviewing the evidence  
7           finds a credible risk of abduction of the child, the court  
8           shall enter an abduction prevention order. The order must  
9           include the provisions required by subsection (a) and measures  
10          and conditions, including those in subsections (c), (d), and  
11          (e), that are reasonably calculated to prevent abduction of the  
12          child, giving due consideration to the custody and visitation  
13          rights of the parties. The court shall consider the age of the  
14          child, the potential harm to the child from an abduction, the  
15          legal and practical difficulties of returning the child to the  
16          jurisdiction if abducted, and the reasons for the potential  
17          abduction, including evidence of domestic violence, stalking,  
18          or child abuse or neglect.

19          (c) An abduction prevention order may include one or more  
20          of the following:

21                 (1) an imposition of travel restrictions that require  
22                 that a party traveling with the child outside a designated  
23                 geographical area provide the other party with the  
24                 following:

25                         (A) the travel itinerary of the child;

26                         (B) a list of physical addresses and telephone

1 numbers at which the child can be reached at specified  
2 times; and

3 (C) copies of all travel documents;

4 (2) a prohibition of the respondent directly or  
5 indirectly:

6 (A) removing the child from this State, the United  
7 States, or another geographic area without permission  
8 of the court or the petitioner's written consent;

9 (B) removing or retaining the child in violation of  
10 a child-custody determination;

11 (C) removing the child from school or a child-care  
12 or similar facility; or

13 (D) approaching the child at any location other  
14 than a site designated for supervised visitation;

15 (3) a requirement that a party to register the order in  
16 another state as a prerequisite to allowing the child to  
17 travel to that state;

18 (4) with regard to the child's passport:

19 (A) a direction that the petitioner to place the  
20 child's name in the United States Department Of State's  
21 child passport issuance alert program;

22 (B) a requirement that the respondent surrender to  
23 the court or the petitioner's attorney any United  
24 States or foreign passport issued in the child's name,  
25 including a passport issued in the name of both the  
26 parent and the child; and

1 (C) a prohibition upon the respondent from  
2 applying on behalf of the child for a new or  
3 replacement passport or visa;

4 (5) as a prerequisite to exercising custody or  
5 visitation, a requirement that the respondent provide:

6 (A) to the United States Department of State Office  
7 of Children's Issues and the relevant foreign  
8 consulate or embassy, an authenticated copy of the  
9 order detailing passport and travel restrictions for  
10 the child;

11 (B) to the court:

12 (i) proof that the respondent has provided the  
13 information in subparagraph (A); and

14 (ii) an acknowledgment in a record from the  
15 relevant foreign consulate or embassy that no  
16 passport application has been made, or passport  
17 issued, on behalf of the child;

18 (C) to the petitioner, proof of registration with  
19 the United States embassy or other United States  
20 diplomatic presence in the destination country and  
21 with the central authority for the Hague Convention on  
22 the civil aspects of international child abduction, if  
23 that Convention is in effect between the United States  
24 and the destination country, unless one of the parties  
25 objects; and

26 (D) a written waiver under the Privacy Act, 5

1 U.S.C. Section 552a, as amended, with respect to any  
2 document, application, or other information pertaining  
3 to the child authorizing its disclosure to the court  
4 and the petitioner; and

5 (6) upon the petitioner's request, a requirement that  
6 the respondent obtain an order from the relevant foreign  
7 country containing terms identical to the child-custody  
8 determination issued in the United States.

9 (d) In an abduction prevention order, the court may impose  
10 conditions on the exercise of custody or visitation that:

11 (1) limit visitation or require that visitation with  
12 the child by the respondent be supervised until the court  
13 finds that supervision is no longer necessary and order the  
14 respondent to pay the costs of supervision;

15 (2) require the respondent to post a bond or provide  
16 other security in an amount sufficient to serve as a  
17 financial deterrent to abduction, the proceeds of which may  
18 be used to pay for the reasonable expenses of recovery of  
19 the child, including reasonable attorney's fees and costs  
20 if there is an abduction; and

21 (3) require the respondent to obtain education on the  
22 potentially harmful effects to the child from abduction.

23 (e) To prevent imminent abduction of a child, a court may:

24 (1) issue a warrant to take physical custody of the  
25 child under Section 9, or the law of this State other than  
26 this Act;

1           (2) direct the use of law enforcement to take any  
2           action reasonably necessary to locate the child, obtain  
3           return of the child, or enforce a custody determination  
4           under this Act or the law of this State other than this  
5           Act; or

6           (3) grant any other relief allowed under the law of  
7           this State other than this Act.

8           (f) The remedies provided in this Act are cumulative and do  
9           not affect the availability of other remedies to prevent  
10          abduction.

11          Section 9. Warrant to take physical custody of child.

12          (a) If a petition under this Act contains allegations, and  
13          the court finds that there is a credible risk that the child is  
14          imminently likely to be wrongfully removed, the court may issue  
15          an ex parte warrant to take physical custody of the child.

16          (b) The respondent on a petition under subsection (a) must  
17          be afforded an opportunity to be heard at the earliest possible  
18          time after the ex parte warrant is executed, but not later than  
19          the next judicial day unless a hearing on that date is  
20          impossible. In that event, the court shall hold the hearing on  
21          the first judicial day possible.

22          (c) An ex parte warrant under subsection (a) to take  
23          physical custody of a child must:

24                 (1) recite the facts upon which a determination of a  
25                 credible risk of imminent wrongful removal of the child is

1 based;

2 (2) direct law enforcement officers to take physical  
3 custody of the child immediately;

4 (3) state the date and time for the hearing on the  
5 petition; and

6 (4) provide for the safe interim placement of the child  
7 pending further order of the court.

8 (d) If feasible, before issuing a warrant and before  
9 determining the placement of the child after the warrant is  
10 executed, the court may order a search of the relevant  
11 databases of the national crime information center system and  
12 similar state databases to determine if either the petitioner  
13 or respondent has a history of domestic violence, stalking, or  
14 child abuse or neglect.

15 (e) The petition and warrant must be served on the  
16 respondent when or immediately after the child is taken into  
17 physical custody.

18 (f) A warrant to take physical custody of a child, issued  
19 by this State or another state, is enforceable throughout this  
20 State. If the court finds that a less intrusive remedy will not  
21 be effective, it may authorize law enforcement officers to  
22 enter private property to take physical custody of the child.  
23 If required by exigent circumstances, the court may authorize  
24 law enforcement officers to make a forcible entry at any hour.

25 (g) If the court finds, after a hearing, that a petitioner  
26 sought an ex parte warrant under subsection (a) for the purpose

1 of harassment or in bad faith, the court may award the  
2 respondent reasonable attorney's fees, costs, and expenses.

3 (h) This Act does not affect the availability of relief  
4 allowed under the law of this State other than this Act.

5 Section 10. Duration of abduction prevention order. An  
6 abduction prevention order remains in effect until the earliest  
7 of:

8 (1) the time stated in the order;

9 (2) the emancipation of the child;

10 (3) the child's attaining 18 years of age; or

11 (4) the time the order is modified, revoked, vacated,  
12 or superseded by a court with jurisdiction under Sections  
13 201 through 203 of the Uniform Child-Custody Jurisdiction  
14 and Enforcement Act.

15 Section 11. Uniformity of application and construction. In  
16 applying and construing this uniform Act, consideration must be  
17 given to the need to promote uniformity of the law with respect  
18 to its subject matter among states that enact it.

19 Section 12. Relation to the Electronic Signatures in Global  
20 and National Commerce Act. This Act modifies, limits, and  
21 supersedes the federal Electronic Signatures in Global and  
22 National Commerce Act, 15 U.S.C. Section 7001, et seq., but  
23 does not modify, limit, or supersede Section 101(c) of the Act,

1 15 U.S.C. Section 7001(c), or authorize electronic delivery of  
2 any of the notices described in Section 103(b) of that Act, 15  
3 U.S.C. Section 7003(b).